

Minutes of the Zoning Board of Appeals Meeting held on December 11, 2019 at 7:30PM

Present: Karen Ungerer, Chairwoman
Kevin Abrams, Craig Brady, Joseph DeVenuto, Gary Kestenbaum
Absent: None
Also, Present: Robert Dickover, ZBA Attorney; Sandra Capriglione, Planning Board; Andrew Giacomazza, Trustee

1. Approval and Acceptance of Previous Minutes:

Motion was offered by K. Abrams, seconded by Chairwoman Ungerer, to approve and accept the minutes of the meeting held on November 13, 2019. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

AYES 5 Ungerer, Abrams, Brady, DeVenuto, Kestenbaum

2. New Business – n/a

3. Action on Decisions –

A. Reineke Vite –

Review draft decision for an area variance to permit the construction of a single-family dwelling on a preexisting lot having no frontage on a public roadway. Property is located between 97 and 101 Smith Clove Road in the R2A Zoning District SBL 218-2-88.

Decision:

Pursuant to the foregoing and employing the criteria for an area variance and In employing the balancing tests set forth in Village Law Section 7-712-b (c), the Board hereby grants the Village Law Section 7-736 variance and Code Section 310-12 (A)(2) variance as requested upon the following conditions:

1. A recorded Private Roadway Easement and Maintenance Agreement shall be signed by the parties using the proposed accessway/driveway. This variance approval requires that the applicant join in the mutual obligations of that agreement, preferably by recording an instrument setting forth the same obligations (or different obligations satisfactory to all existing parties to the agreement). The recorded instrument shall be satisfactory to the zoning board attorney. Should the applicant fail to obtain an agreement from those others to sign a recordable instrument (in such case, written specification of the attempts made to obtain such agreement must be submitted), then he must record a declaration running with the land announcing an obligation on the part of the current owner, and all future owners, of the property to share in the roadway maintenance obligations of the Private Roadway Easement and Maintenance Agreement. The instrument shall be satisfactory to the zoning board attorney. The applicant shall copy the Zoning Board on its letter transmitting the Easement and Agreement to the Orange County Clerk for recording and shall provide the Zoning Board with any return correspondence reflecting either acceptance or rejection of said deed. No building permit will be issued until this condition is satisfied.
2. No building permit will be issued until proof of the Easement and Maintenance Agreement recording are received by the Village. Zoning Board approval of this variance shall not be deemed an acceptance by the Village of any road or street shown on the plan.
3. The accessway/driveway which is to become a recorded easement pursuant to the terms hereof shall not be used by any additional structures for access it being and intended by the variance hereby granted that the accessway shall be used only by the present owners of the property now using the driveway for access and no others until such time as the easement area shall be accepted by the Village as a public street.
4. This approval is not granted in a vacuum but is rather one of two independent yet interconnected discretionary approvals (the other being within the jurisdiction of the Village of Woodbury Building Department). As such, this grant of variance is conditioned upon approval of the proposed building permit by the Village of Woodbury Building Inspector. This approval by the Zoning Board of Appeals is intended to do no more than vary the specified strict limitation provisions in question; it is not intended to authorize construction of a particular building nor approve the footprint, size, volume or style thereof. The Building Inspector remains possessed of all of his power and authority to review, limit, request modifications to, and to ultimately approve (absolutely or conditionally) any application in reference to this project as may come before him.
5. This application is, as noted above, tied to a specific application for approval of a building permit pending

before the Office of the Building Inspector. Therefore, this approval is conditioned upon the applicant diligently pursuing her application before that official. This grant of variance, unless extended, shall expire if a building or occupancy permit for the use is not obtained by the applicant within 180 days from the date of this decision. [§ A316-9 (E)].

6. This decision is subject to and conditioned upon the applicant improving the condition of the easement area to the satisfaction of the Highway Superintendent and building inspector to a level of improvement sufficient to allow the ingress and egress of fire trucks, ambulances, police cars and other emergency vehicles. No certificate of occupancy based upon a building permit duly issued shall be given until the easement area is improved as herein noted.

By roll call a motion to adopt and grant the decision was voted as follows:

AYES 5 Ungerer, Abrams, Brady, DeVenuto, Kestenbaum

B. Hasan –

Review draft decision for an area variance to permit the construction of an addition to an existing single-family dwelling leaving a side yard of 20 ft. Whereas, pursuant to Section 310-6(B) and 310-7 District Regulations a minimum side yard of 30 ft. is required. Property is located in the R1A Zoning District and located at 166 Ridge Road, HM SBL236-6-4.

Decision:

In employing the balancing tests set forth in Village Law Section 7-712-b (c), the Board hereby grants the variance as requested upon the following condition(s):

The variance hereby granted is for the purpose of authorizing construction of the addition as shown on the sketch presented to the Board only. No construction other than for such addition is authorized by this decision and no future or different construction can occur unless a new variance being granted.

The Board is concerned that the sketch presented may not be too scale and therefore the applicant is to present to the building department a scaled sketch accurately depicting the bulk area requirements of the zoning district and the accurate location of the proposed new addition to be no closer to the side yard boundary than 20 feet. It shall be for the building inspector's determination as to the sufficiency and accuracy of the required sketch such that the compliance of the addition with the variance hereby granted can be correctly ascertained.

By roll call a motion to adopt and grant the decision was voted as follows:

AYES 5 Ungerer, Abrams, Brady, DeVenuto, Kestenbaum

C. Hartman Design –

Review draft decision for an area variance to permit the construction of a new Single-Family Dwelling. The applicant proposes a front yard of 36.9 ft. (First Ave) and 30 ft. (Seven Springs Rd). Whereas, pursuant to Section 310-7, 310-12(D), a 40 ft. front yard setback is required. Furthermore, the applicant proposes a 45.2 ft. rear yard, whereas, pursuant to Section 310-7 a 50 ft. rear yard is required. Property is located on a corner lot in the R2A Zoning District at 62 First Ave, HM SBL 214-1-1.

Decision:

In employing the balancing tests set forth in Village Law Section 7-712-b (c), the Board hereby grants the variances as requested upon the following conditions:

The variances hereby granted are for the purpose of authorizing construction of the proposed new structure as shown on the sketch presented to the Board only. No construction other than for such structure is authorized by this decision and no future or different construction can occur unless a new variance being granted.

By roll call a motion to adopt and grant the decision was voted as follows:

AYES 5 Ungerer, Abrams, Brady, DeVenuto, Kestenbaum

5. Public Hearings –

A. Jagarnath –

Public Hearing for an area variance to permit the installation of an in-ground pool leaving a 10 ft. setback in the rear yard and a 10 ft. setback in the side yard. Whereas, pursuant to Section 310-25(A), a minimum of 20 ft. setback is required in both the side and rear yard. Said property is located in the R1A Zoning District at 5 Stirling Circle in Highland Mills and is known on the Village of Woodbury Tax maps as Section 249 Block 1 Lot 73.

Dr. Jagarnath stated he has an intention of installing an inground swimming pool in his backyard which is completely surrounded with a 6 ft high vinyl fence. Chairwoman Ungerer, stated that multiple neighbors give their consent to Dr. Jagarnath installing the swimming pool. K. Abrams made a motion to close the public hearing. Attorney Dickover stated the board had to wait to receive the 239 back from the county before closing the public hearing. K. Abrams questioned Attorney Dickover, asking why the board had to wait for the 239 when the board was informed not to send the 239 to the county.

C. Brady, made a motion, seconded by Chairwoman Ungerer to type this application a type two action.

AYES 5 Ungerer, Abrams, Brady, DeVenuto, Kestenbaum

Chairwoman Ungerer, made a motion, seconded by C. Brady, to table the decision and discuss requirements at the end.

AYES 5 Ungerer, Abrams, Brady, DeVenuto, Kestenbaum

*** Executive Session:**

G. Kestenbaum, made a motion, seconded by J. DeVenuto, to go into executive session and discuss The Shops of Woodbury at 7:54 PM. They returned at 8:04 PM. C. Brady made a motion, seconded by Chairwoman Ungerer, to end executive session.

AYES 5 Ungerer, Abrams, Brady, DeVenuto, Kestenbaum

B. The Shops of Woodbury, LLC –

Public Hearing for area variances and/or Code interpretations. Applicant proposes to construct a commercial center and hotel having a lot area of 9.65 acres. The Applicant is also seeking relief from Section 310-7 regulating side yard setbacks and Section 310-12B regulating setbacks for commercial centers from state and county roads. Said property is located in the IB Zoning District off of the intersection of State Route 32 and Locey Lane in Central Valley and is known on the Village of Woodbury Tax Maps as Section 225 Block 1 Lots 34.1 & 34.2.

Chairwoman Ungerer, stated she wants a map to scale with landscaping on the same map. She also asked why they put a sidewalk straight through the property. Mr. Esposito stated the Planning Board requested it to be there. The board discussed precedence that could be set if they allow the applicant all the variances they are asking for, they also discussed repositioning the Hotel and moving the footprint closer to Route 32. Mr. Esposito said they would do it if the board requested it however; they would prefer to keep it where it is because if it is moved they loose parking in the front of the Hotel. The board stated that they are still waiting for the GML referral.

Mr. Charlie Badzydlo, stated he is the lawyer/representative for the Hampton Inn. He stated they have concern for overdevelopment of property. He also requested that the board look into the deed restrictions against hotels and restaurants being on this property.

K. Abrams, made a motion seconded by Chairwoman Ungerer, to continue and carry the public hearing to January 8, 2020. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED AYES 5 Ungerer, Abrams, DeVenuto, Kestenbaum, Brady
NOES 0

C. Avalon –

Public Hearing for review of a ruling by the Building Inspector pursuant to Section 310-49(c)(3). Whereas, Village Code Section 310-7.1(d)(5) states a hotel shall have frontage on a state or county highway or right of way, the Building Inspector has determined that the primary frontage for the proposed hotel is on a Village Road (Turner Rd.). If required, an area variance is requested to permit the construction of a 130 room 4 story hotel on a Village Road. Said property is located in the HO (Hotel Overlay) and LC (Limited Commercial) Zoning District at 140 Route 32 and 94 Turner Road in Central Valley and is known on the Village of Woodbury Tax maps as Section 226 Block 1 Lot 5 & 6.2.

Mr. John Queenan the representative for the applicant explained what variances they were requesting and then stated he along with the applicants got the idea that they were good to go as per the Village Attorneys email correspondence. The board requested to see the email and Mr. Queenan stated he didn't have it on hand. The board then asked the applicant for a clear definition of the interpretation of the definition of frontage. They

also requested that the applicant look into decisions from previous years. The applicant said he would look into it. The board also asked for a better larger map due to the map they received being unclear and very small.

G. Kestenbaum, made a motion seconded by K. Abrams, to continue and carry the public hearing to January 8, 2020. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED	AYES	5	Ungerer, Abrams, DeVenuto, Kestenbaum, Brady
	NOES	0	

6. Building Inspectors Report

7. Deliberations on closed Public Hearings

A. Jaganath –

The board went over the 239 criteria and answered no to all of the questions deciding that a 239 was not needed. K. Abrams made a motion, Chairwoman Ungerer seconded it to close the public hearing. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED	AYES	5	Ungerer, Abrams, DeVenuto, Kestenbaum, Brady
	NOES	0	

The following responses were provided in the “Statement of Ownership and Interest” provided by the applicant for a use variance and the Boards decision on each question follows:

1. *Will the granting of this variance produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties?* The applicant stated: No, the proposed site for the swimming pool is completely fenced by 6ft vinyl panels and the pool will not be connected in any way to neighboring properties. **The Board Agreed.**
2. *Can the benefit you seek be achieved by some other feasible method other than variance?* The applicant stated: No. The size and shape of the backyard where the proposed pool is to be located, limit the location of the pool and does not allow for the installation without imposing on the 20 foot regular allowance by the Zoning Board. **The Board Agreed.**
3. *How substantial is the variance that you are requesting?* The applicant stated: Not substantial – 10 feet from the property line. **The Board Agreed.**
4. *Will the granting of the variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?* The applicant stated: No, it will have no effect or impact on the physical or environmental conditions in the neighborhood or district. Since it will be within the fenced backyard. **The Board Agreed.**
5. *Is the alleged difficulty self-created?* The applicant stated: No, the size of the property is relatively small and the house is so located that the size of the backyard is proportionally small. Also, the shape of the backyard is a further constraint. **The Board Disagreed.**

K. Abrams, made a motion, seconded by G. Kestenbaum to have Attorney Dickover prepare a favorable decision. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED	AYES	5	Ungerer, Abrams, DeVenuto, Kestenbaum, Brady
	NOES	0	

8. Adjournment

With no further business to discuss, a motion was offered by K. Abrams, seconded by Chairwoman Ungerer, to adjourn the meeting at 9:27 PM.

ADOPTED	AYES	5	Ungerer, Abrams, Brady, DeVenuto, Kestenbaum
	NOES	0	

Jessica McClennan, ZBA Secretary